

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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In re: Petition of Boston Edison Company, Cambridge	)	
Electric Light Company and Commonwealth Electric	)	
Company, d/b/a NSTAR Electric, pursuant to G.L. c.	)	D.T.E. No. 03-100
164, §94 and 220 C.M.R. §§ 5 <i>et seq.</i> requesting approval	)	
of a new renewable power supply offering	)	
	)	

**ADDITIONAL COMMENTS OF THE CAPE LIGHT COMPACT AND  
MASSACHUSETTS ENERGY CONSUMERS ALLIANCE, INC.**

**I. INTRODUCTION**

The Cape Light Compact (“Compact”) and the Massachusetts Energy Consumers Alliance, Inc. (“Mass Energy”) intervenors in the above-captioned proceeding, jointly submit these additional comments, consistent with the procedural schedule established by the Hearing Officer at the December 11, 2003 pre-hearing conference. (Hereafter the Compact and Mass Energy together are sometimes referred to collectively as the “Intervenors.”)

At stake in this proceeding is whether the Department will grant NSTAR monopoly rights to combine renewable energy certificates with the standard offer and default electricity supply procured at no risk to NSTAR, billed through NSTAR’s billing system, and in the process make a set of claims to consumers about its green offering that are unlikely to be met. For the reasons set forth in these and the preliminary comments of the two organizations, and as will be set forth from a legal basis in briefs due later in this proceeding, the two organizations urge the Department to reject such an untoward result and instead to establish an appropriate framework to enhance the competitive market for renewable energy development.

Mass Energy is a nonprofit organization with a dual mission of making energy affordable and environmentally sustainable. As stated in its Petition to Intervene, it represents a point of view that is based upon twenty-one years of commitment to consumers and, more recently, salient experience in the renewable energy marketplace. In particular, Mass Energy worked, under funding from the Massachusetts Technology Collaborative (“MTC”) and the John Merck Fund, to develop a green power consumer aggregation plan, the purpose of which was to establish a framework under which consumers could voluntarily purchase renewable energy in such a way as to have a meaningful impact on the region’s electricity mix. In doing so, Mass Energy worked and is continuing to closely coordinate with many Massachusetts environmental organizations and communities in NSTAR’s service territory: the Town of Brookline’s Moderator’s Committee, the City of Boston Public Health Commission, City of Cambridge, Clean Water Action, Coalition on Environment and Jewish Life, Environmental League of Massachusetts, HealthLink, Mass. Audubon Society, Mass. Climate Action Network, MASSPIRG, City of Newton, Newton Green Decade Coalition, Sierra Club – Mass. Chapter, New Ecology Inc., Salem Alliance for the Environment, Somerville Climate Action, Toxics Action Center/Mass. Citizens for Safe Energy, and the Tufts Climate Initiative, among others.

The Compact is a governmental aggregator under G.L. c. 164, §134 that consists of the twenty-one towns in Barnstable and Dukes Counties, as well as the two counties themselves. The Compact’s Aggregation Plan was approved by the Department in DTE 00-47. The purposes of the Compact include, among other things, the advancement of the interests of consumers in a competitive electric supply market and the encouragement of “renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy.” Compact Inter-Governmental

Agreement at Article I. Toward that end, the Compact presently operates a municipal aggregation Pilot Project, which provides electric power supply on an opt-out basis to approximately 50,000 customers who are located within the Compact's service territory and would otherwise be served as Default Service customers. The Compact is working actively to expand its power supply program to all Cape and Island consumers. The Compact also operates an Energy Efficiency Plan ("EEP") that was approved by the Department in DTE 00-47C and again in DTE 03-39. The Compact has considerable experience in public education of consumers on competitive choice issues, and is committed to developing a renewable energy certificate product that could be offered to any consumer, on an opt-in basis, located in the twenty-one Compact communities.

For twenty-one years, Mass Energy has been an advocate for renewable energy, waiting for the day when consumers could be given meaningful opportunities to exercise their right to choose energy sources that are clean and renewable. (In the Compact's case, that period has been approximately seven years, but the commitment is no less deep than Mass Energy's). So to some extent, both Intervenor are pleased that NSTAR is willing to act upon its customers' interest in purchasing green power, and believe that it is critical for residential and small commercial customers in the NSTAR territory to be presented with opportunities to support green power through their monthly electric bill payments. Properly designed, a green power program can effectively help finance the construction of additional renewable energy generation capacity over and above that which will be required by the Massachusetts Renewable Portfolio Standard.

From the shared perspective of the Compact and Mass Energy, the true tests of any green power program are the following:

1. To what extent will it lead to more renewable energy in Massachusetts and New England?
2. Will it offer consumers meaningful choices?
3. Is it structured in such a way as to assure accountability with respect to meeting stated objectives, in terms of truth in advertising and consumer disclosure?

Unfortunately, given the circumstances present in the retail green electricity market in Massachusetts at this time and the content of NSTAR's proposal, the Intervenor believe that the proposed "NSTAR Green" program (hereafter the "NSTAR Green Proposal") would not meet the above tests. NSTAR's proposal is deficient for the following reasons, among others:

- ?? The proposal is incompatible with the development of competitive options or choices for residential and small commercial customers;**
- ?? Aside from issues of competition, the NSTAR Green Proposal does not contain essential terms and components, particularly as they relate to the content of the proposed product. If accepted, consumers will not be given proper assurances that the program will lead to the filing's stated objectives;**
- ?? This program establishes NSTAR as a monopoly supplier of green certificates without holding it to appropriate standards; and**
- ?? NSTAR has not presented a marketing plan, leaving no way to resolve threshold questions that must be answered about program cost, cost allocation, and rate design, as well as its effectiveness and ability to meet stated goals.**

Each of these failings individually, in and of itself, is ample reason to reject the NSTAR Green Proposal. Together, they clearly compel such a result.

The remainder of these comments set forth the factual basis to support these points. Legal briefs that the Intervenors will submit in January, in keeping with the procedural schedule established in this docket, will relate these and other facts to the pertinent law, as set forth in the General Laws and decisions and other orders of the Department, courts and other tribunals. And, as stated by Compact counsel during the prehearing conference, the Compact and Mass Energy reserve the right to file a motion or otherwise seek evidentiary hearings and a chance to both cross-examine NSTAR witnesses and present their own direct case, after the close of the initial discovery period on January 6<sup>th</sup>.

## **II. NSTAR'S PROPOSAL IS INCOMPATIBLE WITH THE DEVELOPMENT OF COMPETITIVE OPTIONS OR CHOICES FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS**

The proposed program is anti-competitive and does not meet the test that the Department set forth in its recent Default Service order, DTE 02-40-B. By offering its own green power purchasing option, NSTAR would have an unfair advantage over other renewable energy suppliers and municipal aggregators such as the Compact, which would seek to offer green electricity options to all NSTAR customers, and would make it virtually impossible for others to enter the market as competitive green energy suppliers in the NSTAR territory.

The NSTAR Green Proposal cited a present lack of green electricity options available to customers, failing to recognize the existence of other offerings of renewable energy certificates available in the market today, to mention reasons for their perceived absence of market activity and to explain how its proposal would help. There certainly are reasons why small consumers do

not have many competitive options at this time. The main reason, however, is obvious. It should come as no surprise to anyone that customers will shop less when the Standard Offer is below market and the Compact's considerable experience in power supply markets has confirmed this over and over. This has been the case throughout the country where restructuring has taken place. Until March 2005, Massachusetts cannot expect a robust market for competitively offered electricity.

To understand why NSTAR has framed the problem – the need for a green option for consumers – incorrectly and has proposed the wrong response, it is helpful to review recent market developments in Connecticut and Massachusetts. In 2002, two competitive suppliers in Connecticut, Green Mountain Energy and the Connecticut Energy Cooperative, pulled out of the state, simply because they could not survive where (a) the standard offer was below market, and (b) consumers were not educated about their options and were therefore not looking to shop.

Here in Massachusetts, the record shows that throughout 2002, Mass Energy and the other potential green power consumer aggregators funded by the MTC failed to identify *any* licensed suppliers willing to serve the residential market for the purpose of offering either green or brown power (except Mirant which was attracted to the Compact's municipal aggregation program). Mass Energy actively recruited suppliers and issued Requests for Proposals and made the results of its work known to MTC. But no supplier was willing to enter the state because of the Standard Offer and other market impediments. As a result, in late 2002, Mass Energy decided to become a licensed supplier of green electricity itself (electricity bundled with certificates), with support from MTC and the John Merck Fund. However, just as Mass Energy was about to launch a product, National Grid announced its plans to offer its customers the opportunity to purchase green power by choosing among several renewable energy suppliers.

National Grid's intervention in the marketplace was sufficient to cause Mass Energy to change its approach and become a supplier in the GreenUp program, offering certificates to consumers on National Grid's Standard Offer and Default Service.

It cannot be emphasized enough that the National Grid model has already attracted four suppliers in Massachusetts, and those suppliers are offering a total of seven products. The model is being implemented in Rhode Island as well, where five suppliers are expected to compete for green power customers. So in three states (including New York), the National Grid model has given consumers the opportunity to choose green power from competitive suppliers. By any measure, the National Grid model complies with DTE Order 02-40-B, which states that any distribution company seeking to provide customers with an option to purchase renewable energy must "clearly demonstrate that providing such product is compatible with the development of competitive options for the customer classes to which the product would be available." *Id.* at 46 (and see DTE 03-55 at 6).

To the extent the percentage penetrations under the National Grid model are low thus far this is not a basic failing of the model, but rather a result of lack of adequate consumer education and utility marketing, resulting in an over-reliance on a small bill-stuffer ballot to both explain the program and the offerings, and enable the choice. The Compact and Mass Energy believe that the kind of extensive outreach that, for instance, the Compact has used in implementing its EEP, shows that consumers will participate in such programs, given proper information. The Intervenor further believe that, by working together, NSTAR, the Compact, and competitive renewable energy suppliers could produce an extremely effective program.

The GreenUp program also progressively enhances the competitive marketplace for renewable energy by addressing some major barriers to entry in three primary ways:

First, the program enables renewable energy companies to procure just renewable energy certificates and not electricity. This will be a critical element until green suppliers build up customer bases which will enable them to competitively procure electricity.

Second, the program allows competitive offerings to be presented to customers through their monthly electric bill, and allows for simple enrollment. This approach - being able to bill through the utility's billing system rather than issue a separate bill - is far less costly to providers and far less confusing to customers. In addition, the Intervenor believe that the product being offered in partnership with the utility adds greatly to reducing consumer confusion, creating a connectedness in the eyes of end-users to their electricity usage that is not present when RECs are sold independently. As a practical matter, it follows that these factors will increase the market penetration greatly, thus lowering customer acquisition costs and allowing for lower product costs.

Third, and finally, the program removes a great deal of the real and perceived risk to the consumer of switching suppliers, and it does not require Standard Offer customers to abandon their below-market electricity rate.

While the National Grid model is not perfect, it does provide renewable energy suppliers in Massachusetts and Rhode Island with valuable experience conducting many of the activities that would be required of them as full retail competitive suppliers and the possibility of achieving a reasonable economies of scale, so that they will be better prepared to compete in the retail market when conditions are more favorable in the future (i.e. when Standard Offer rates expire in March, 2005). The Compact's Default Pilot Project, which it has reported on in detail to the Department, provides similar experience and paves the way to truly competitive markets.

NSTAR argues that it is not seeking a monopoly or improperly using its built-in advantage as a LDC and that suppliers are welcome to compete. This is extremely disingenuous. First and foremost, the NSTAR model greatly exacerbates the preferential effect caused by the Standard Offer. When NSTAR is able to provide a customer with a below market price for electricity, it has a tremendous advantage over any potential competitor. Aside from the Standard Offer issue, in its initial filing NSTAR states that it may, in the future, propose the recovery of any “incremental costs (e.g. administrative or informational) from NSTAR Green customers.” *Id.*, n. 5. The Compact, in its role as an advocate for the roughly two hundred thousand Cape and Island NSTAR consumers, is extremely concerned about asking ratepayers to foot some of the costs for a program in which they do not participate and in which NSTAR itself derives the benefits. Furthermore, there are a series of questions<sup>1</sup> which must be completely and satisfactorily resolved before approving any aspect of the NSTAR Green Proposal:

?? What are those incremental costs? Has NSTAR done a complete cost of service analysis, looking at appropriately allocated sharing of administrative costs, procurement, contracting, staffing, regulatory compliance, third-party auditing costs (i.e. by Green-e or the equivalent to ensure program credibility), and marketing costs?

?? If NSTAR Green customers are not going to be asked to pay for those incremental costs, who will be? Will NSTAR shareholders pay or will non-participating NSTAR customers pay? If non-participants are going to pay, will it be all non-participants in all ratepayer classes, or just residential and small commercial customers?

A program that incorporates best practices and goes beyond tokenism would entail a significant programmatic and marketing effort. According to the National Renewable Energy

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<sup>1</sup> The Intervenor will propound their initial discovery shortly concerning these and other issues.

Laboratory (“NREL”) a number of utilities have reported that only 20% to 30% of their customers are aware that they offer a green power option.<sup>2</sup> If NSTAR intends on undertaking a serious marketing effort, and it is allowed to tack marketing and other non-certificate costs of its program onto the distribution charge, it will succeed in raising yet another barrier to entry for competitive suppliers.

Furthermore, if distribution companies are allowed to balkanize the marketplace, consumers will be extremely confused by the marketing messages that they receive, whether intended for them or not, as the media markets in the state cross these service territories, particularly in the Greater Boston area. Competitive suppliers will be unable to use the most efficient marketing outreach methods and outlets. DTE should not build a permanent inefficiency into the marketplace.

Undoubtedly, the NSTAR model would deny the renewable energy suppliers with the opportunity to compete for over 40% of the state’s small consumers. In so doing, it would substantially reduce the potential of those companies to achieve critical economies of scale, stay in business, prosper, and to improve the value proposition of their green power products.

NSTAR states that it selected its product based upon the results of two focus groups. Mass Energy has conducted a tremendous amount of market research, available upon request by the Department. It has found that most surveys have done a poor job of predicting actual market results. Its research has also shown that there is no one formula for success. According to the NREL’s “Green Power Marketing in the United States: A Status Report,” there are now more than 350 utilities in 33 states offering green power in this country, and both numbers are

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<sup>2</sup> Bird, Lori and Blair Swezey, 2003, *Green Power Marketing in the United States: A Status Report*, 6<sup>th</sup> ed. NREL/TP-620-35119, Golden, Colorado: National Renewable Energy Laboratory, p. 4.

growing.<sup>3</sup> The content and prices of those programs varies widely but of the hundreds of programs available nationwide, NSTAR Green would be the only one provided by a distribution company, in a monopoly type offer, with-in a restructured marketplace.

There is simply nothing in the NSTAR filing to suggest that it is based upon “best practices.” The Intervenor, much as they disagree with the position, can understand how one supplier may want to offer just one product. But what should seem obvious is that different consumers may want to buy different percentages of green electricity and very few would be satisfied with having just one “choice.” For that reason, there are a variety of options available to GreenUp customers, and across the country where regulated utilities offer green pricing, they almost always offer consumers more than one choice. NSTAR says that it is offering just a 25% option for the sake of simplicity, but most utilities across the country have found reason to be far more flexible. In fact, the top ten utility programs around the country all offer a 100% option.<sup>4</sup>

### **III. THE PROPOSED NSTAR GREEN PROGRAM DOES NOT CONTAIN ESSENTIAL PRICE AND CONTENT TERMS**

To begin with, the NSTAR Green Proposal does not stipulate the price to be charged green product consumers. It appears that NSTAR is looking to get its foot in the door without having to show critical program details. Again, because the NSTAR program establishes a monopoly on this service (i.e. monopoly rights to combine renewable energy certificates with the standard offer and default electricity supply procured at no risk to NSTAR, and billed through

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<sup>3</sup> *Green Power Marketing in the United States: A Status Report*, *supra* at pp. 53-64.

<sup>4</sup> See the DOE and EPA websites at:  
<http://www.eere.energy.gov/greenpower/topten.shtml>  
<http://www.epa.gov/greenpower/locator.html>

NSTAR's billing system), this is patently unacceptable.<sup>5</sup> The Department should be concerned about whether the price charged by NSTAR will be based upon a rational procurement of certificates, a strong commitment to marketing the program, and a proper accounting and fair allocation of service costs.<sup>6</sup>

In terms of product quality, the proposed program does not stipulate the product content, other than to reference some vague goals. Based upon current and projected circumstances in the renewable energy marketplace, the Compact and Mass Energy question whether NSTAR can achieve its stated goal of providing certificates to match 25 % of usage, especially with respect to their stated goal of five % wind and solar, unless it does not intend on serving more than a token number of customers. Driven by the Renewable Portfolio Standard, demand for certificates in Massachusetts is far ahead of supply. With each passing day, it is becoming clearer that load-serving entities, as a whole, will fail to meet the 2004 RPS requirement for renewable energy certificates.<sup>7</sup>

Recently, two expert market analysts, Robert Grace of Sustainable Energy Advantage (a renewable energy consultant and a Limited Participant in this proceeding on his own behalf) and Anna Giovinetto of Evolution Markets (a renewable energy certificate broker), made

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<sup>5</sup> The Intervenor will argue on brief that, as a matter of law, the Department cannot approve the NSTAR Green Proposal without the establishment of pricing and other such details in advance, given the way in which it pre-empts the market.

<sup>6</sup> For instance, competitive suppliers such as those providing supply through the Compact's Default Pilot Project have to account for service costs which NSTAR is, at best, vague about here. In order to provide Massachusetts Electric customers with renewable energy certificates, the GreenUp suppliers have been required by the Department to incur costs for Electronic Business Transactions ("EBT") (also known as Electronic Data Interchange). A renewable energy certificate program could have been designed without the need for an expensive EBT system. However, as it was explained to Mass Energy by representatives of DTE, DOER, and National Grid, it was deemed important that GreenUp suppliers be required to operate just like fully licensed competitive electricity suppliers so they would not be discouraged from one day becoming competitive electricity suppliers. NSTAR, in stark contrast, does not want to play by these rules.

<sup>7</sup> The Compact's Default Pilot Project contract puts this responsibility on the supplier. See Article 8.1 of the Pilot Electric Supply Agreement filed in DTE 03-61. The Compact knows first-hand from discussions with its supplier that procuring certificates for 2004 is becoming increasingly more difficult and expensive.

presentations at the fall meeting of the Northeast Energy and Commerce Association. Ms. Giovinetto indicated that the supply of certificates in 2004 may be less than half of the RPS demand. Mr. Grace indicated that 2004 compliance will be a “close call” based on a comparison of RPS supply and demand, *ignoring any demand in the green market*. Both analysts agree that certificate costs are rising, from \$25 per MWh in 2002, to over \$30 in 2003, and over \$40 for 2004.

The Compact and Mass Energy believe that NSTAR is coming to the certificate marketplace both too late and ineffectively in order to put together a product that meets its stated content goals within the price range suggested in the filing. NSTAR suggests that it can offer a 25% RPS-eligible product, with 5% coming from wind and solar. However, postulating a reasonable mathematical construct demonstrates the fallacy of NSTAR’s approach:

?? Currently, DOER has certified that less than 1 MW of wind and solar are eligible to meet the RPS.<sup>8</sup> These projects translate into approximately 2,200 certificates. However, 1,600 of those certificates are under contractual agreement to Mass Energy, not NSTAR. It is not clear that NSTAR will be able to place *any* of those 2,200 certificates under agreement. Therefore, how can it possibly serve any number of customers with 5% wind and solar certificates?

?? NSTAR has about 850,000 small customers. If just 1% of those customers bought NSTAR Green, NSTAR would need to supply them with over 30,000 RPS-eligible certificates, 7,500 of which are supposedly going to be wind and solar (perhaps none of which are available). Given that every green power marketing expert would agree that

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<sup>8</sup> <http://www.state.ma.us/doer/rps/approved.htm>: Massachusetts Division of Energy Resources RPS-certified new renewable generation units.

NSTAR's customer base has excellent demographics, it should not be out of the realm of possibility that those numbers would be reachable quite quickly.<sup>9</sup>

?? Furthermore, given the shortage of RPS-eligible certificates forecast for 2004 and 2005, how is NSTAR going to find enough certificates to meet the claims stated in its filing in this docket, at the same time that it is responsible for about 45% of the state's RPS-obligation (over 300,000 certificates). It strains credulity to believe it can reconcile these competing demands. If Ms. Giovinetto is correct in her projection for 2004 RPS compliance, then there is a high probability that either NSTAR and/or National Grid will be subjected to heavy Alternative Compliance Payments ("ACP"), or NSTAR Green will fail to meet its stated claims.<sup>10</sup>

The simple math suggests that if NSTAR is allowed to run NSTAR Green and if the program succeeds in capturing customers, then the main effect of NSTAR's procurement, as described in the filing, will be to drive up the short-term price of certificates for RPS compliance and increase the likelihood that many Massachusetts ratepayers, be they customers of NSTAR or another load-serving entity's, will be socked with high RPS compliance costs (probably due to ACPs). Furthermore, there does not seem to be any way that NSTAR will even be able to offer NSTAR Green customers landfill gas certificates at less than 4 cents per kWh. The price might have to exceed 5 cents per kWh so that NSTAR can fund its ACP obligation. If NSTAR is not willing to charge NSTAR Green customers that true short-term cost, then will it ask non-participants to share the burden?

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<sup>9</sup> Note that NSTAR stated that the market would be saturated within two years, raising a fundamental question of how it defines saturation.

<sup>10</sup> From a policy perspective, even putting aside the legal issues about whether a LDC can offer a product like NSTAR Green on a monopoly basis, this conflict should be very troubling to the Department.

Furthermore, at what price are RPS certificates to be reflected in Standard Offer and Default Service rates? Under no circumstances should the cost of RECs for NSTAR Green be lower than the average price reflected in Standard Offer and Default Service pricing.

The end result of this exercise should be clear – the market effects of NSTAR Green, particularly if it achieves any success – will be highly detrimental to consumers and the development of renewable markets.<sup>11</sup> It simply follows that the NSTAR Green Proposal will do next to nothing to create demand for new projects, which should be the goal of *any* green power program.

#### **IV. NSTAR WANTS A GREEN ENERGY MONOPOLY, WITHOUT BEING HELD TO APPROPRIATE STANDARDS**

In its proposal, NSTAR simply ignores the potential role of the nation’s leading standard in the green power marketplace, Green-e, which is administered by the Center for Resource Solutions, <http://www.green-e.org>. The Green-e certification standard sets minimum thresholds for credible green power offerings. While it is certainly possible to operate a green energy

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<sup>11</sup> According to NREL, 78.5% of the new renewables capacity supplying green pricing programs in this country is wind. And 93% of the new renewables capacity serving competitive green power markets comes from wind. *Green Power Marketing in the United States: A Status Report, supra at p. 4.*

These numbers suggest two pertinent conclusions:

- ?? Green power marketers know that wind is more appealing than biomass. If a thorough examination of NSTAR’s RFP responses proves the Intervenor’s prediction that NSTAR Green will be based almost entirely on biomass and other non-wind and solar resources, then it would appear that NSTAR’s interest in the green power supply is too little, too late. If NSTAR wanted to bring on new wind capacity, it should have done so by now.
- ?? Although it is impressive that 78.5% of the new renewable capacity in utility programs comes from wind, note that the percentage is much higher in competitive markets. Clearly, competitive marketers are working even harder than utilities to be “dark green” and satisfy the range of consumer demands. If this is part of what makes for best practices and consumer satisfaction, it would seem to be a very strong reason to reject the NSTAR Green Proposal and move toward a GreenUp-like model.

supply program that meets the standards discussed earlier in these comments without being Green-e certified, it is important to note that Green-e standard has been developed nationally and regionally with the input of environmental groups, marketers, and other stakeholders. It requires marketers to increase the percentage of new renewable content over time. And for products offered through the utility bill, Green-e certification requires that at least 50% of the customer's usage must be met by new and/or existing renewables. Marketing of Green-e certified products must meet strict requirements for clear communication and disclosure to customers, and marketers of such products must adhere to strict standards of conduct. Finally, Green-e product claims are verified annually by third-party auditors under defined protocols.

As with the National Grid GreenUp model, the Green-e certification program is not perfect. Nonetheless, all four of the GreenUp program suppliers are offering Green-e certified products. This is undoubtedly so because in the absence of statewide standards for product quality, the Green-e logo sends a message to consumers that the product meets a worthy standard.

The National Association of Attorneys General and others who care about credibility in the green power marketplace are quite concerned about claims made by marketers and accountability. According to the NAAG guidelines, “[a]ny party making an express or implied claim that presents an objective assertion about the environmental attributes of an electricity product or company must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim.”<sup>12</sup> At least in the GreenUp program, if one of the suppliers falls short of its claims, consumers have other options and suppliers run the risk of losing customers, if not

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<sup>12</sup> *Resolution Adopting Environmental Marketing Guidelines for Electricity*, 1999. Scottsdale, Arizona: National Association of Attorneys General.

legal challenges. The GreenUp model is superior in terms of guaranteeing consumer confidence in the green power marketplace.

The Department's primary test that NSTAR must satisfy relates to a competitive marketplace. However, the Compact and Mass Energy believe that green power choice is fundamentally a proposition intended to encourage environmental protection. Therefore, they believe that the Department must take note of the fact that NSTAR is not offering a Green-e certified product and does not have the support of any environmental organization with a track record of working on renewable energy issues.<sup>13</sup>

NSTAR may state that its program is modeled after utility programs across the nation. But NSTAR is actually in a unique position. It is a distribution company in a restructured marketplace, while every other green pricing program in the country involves the distribution company as a vertically integrated supplier responsible for generation. Consequently, those utilities have every reason to either own generation capacity (i.e. wind turbines) or long-term contractual entitlements to electricity and certificates. As such, when they offer certificates to customers participating in a voluntary green power program, their non-participating customers are benefiting from the long-term power supply. Moreover, several utilities (e.g. Eugene, Oregon; Austin, Texas), are offering green power customers a fixed price for electricity that compares well to the basic rate offered to the general customer base.

By contrast with utilities in traditional markets, NSTAR is in no such position to offer such benefits to its ratepayers. And the Compact and Mass Energy believe that, under the

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<sup>13</sup> Mass Energy's green power business plan is based upon the concept of translating short-term consumer demand into financial support for RPS-eligible, New England-based renewable energy projects. This is not easy to accomplish, but it is making inroads. Mass Energy, as well as some of its competitors, are entering into multi-year contracts with generators, particularly for new wind projects. In the Intervenor's view, this is a primary reason why consumers should be given meaningful choices, so that they can affect the region's energy mix, and is the reason why RPS are required in the Commonwealth.

Restructuring Act, it is not supposed to be in the business of trying. However, competitive green power suppliers should eventually be able to offer a bundled product of energy and certificates that does have a solid value proposition based upon both environmental quality and price stability.

There is no utility in the country offering green pricing to customers eligible for retail choice. The closest situation to that which NSTAR is attempting to create is in the NYSEG territory in New York. NYSEG has entered into a partnership with a green marketer, but its offerings cannot be collected through the utility's invoice, so as not to skew the competitive playing field. Other than that, the Intervenor has seen no examples of a distribution company offering a green pricing product in a competitive market.

## **V. NSTAR HAS NOT PRESENTED A MARKETING PLAN NOR PROVIDED OTHER CRITICAL INFORMATION ABOUT ITS PROPOSAL**

It is hard to judge what kind of market penetration (and commensurate requirement for certificates) NSTAR Green would have because NSTAR failed to provide a marketing plan. NSTAR states that it will saturate the market within two years. The Department, Intervenor and other parties, of course have no idea what percentage of the market *NSTAR* would consider saturation.

According to “Green Power Marketing in the United States: A Status Report”, the top programs in the country have achieved participation rates as high as 3% to 6%.<sup>14</sup> Lists of the Top 10 utility green pricing programs are posted on the U.S. Department of Energy's Green Power Network Web Site at [www.eere.energy.gov/greenpower/topten.shtml](http://www.eere.energy.gov/greenpower/topten.shtml).

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<sup>14</sup> *Green Power Marketing in the United States: A Status Report*, *supra* at p. 3.

On the other hand, the empirical evidence shows that many utilities are operating programs with participation rates of one percent or less. Analysts such as Lori Bird, Blair Swezey, and Ed Holt have identified a number of factors that lead to success and failure.<sup>15</sup> NSTAR has not shown how its proposal in this docket has responded to the critical issues in that research or even considered it.

?? As referenced above, if NSTAR intends on making its program one of the best at, say, 3% penetration, the Department must first determine how much NSTAR will spend on the program and how the money will be spent. As with any rate proposed by a regulated utility, NSTAR should be required to present a cost of service analysis, showing supported allocations of administrative and general costs, procurement costs, contracting and staffing costs, regulatory costs, third-party auditing costs, and marketing costs.

?? Who will pay for the NSTAR Green Proposal, especially if it is unsuccessful in any fashion?

?? Where will it get more than 30,000 certificates per year, of which 7,500 would be wind and solar (and at what cost)?

In a September meeting with two NSTAR vice-presidents, Mass Energy asked NSTAR executives how they would respond if their RFP for certificates failed to produce enough to meet demand. The executives responded that they would run a waiting list or hold back on marketing. Both of these “solutions” are unacceptable because NSTAR will have a monopoly on this service. They are also unnecessary given that there are several renewable energy suppliers hoping to serve NSTAR customers; additionally the Compact, with its demonstrated track record of outreach and energy program administration, is willing to state on the record its interest in

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<sup>15</sup> See also Holt, E.A. *Green Pricing Resource Guide*, Regulatory Assistance Project, Gardiner, Maine, February 1997, p. 43.

offering an “opt-in” program on the Cape and Vineyard modeled after the National Grid Green-Up model.

The Intervenor are also very disappointed that NSTAR would think that it could saturate its market in two years. There is a great deal of inertia to overcome before we can expect many consumers to exercise any kind of option, green or brown. They believe that the market will build slowly but surely over time and that any green power program should be “built to last.” There is nothing in the NSTAR Green Proposal to suggest that NSTAR has a long-term commitment to green power, or the knowledge base to run a meaningful program.

## **VI. CONCLUSION**

It seems evident that the Department would be sending dramatically inconsistent messages to the marketplace by approving National Grid’s GreenUp model on one hand, and NSTAR’s model on the other. When National Grid presented its model to stakeholders, Mass Energy and others asked the Department to review that proposal with an eye towards developing one statewide model for green power. They also asked NSTAR to put forth its green power model so that it could be considered alongside National Grid’s. Instead of approving the instant proposal, the Intervenor once again ask the Department to consider a statewide approach to green power programs, or at least approaches that would not work at cross-purposes.

Overall, the Compact and Mass Energy believe that a “new and improved” version of a National Grid GreenUp-like program makes the most sense for Massachusetts. While a GreenUp-like program is obviously in the interests of competitive renewable energy suppliers, the Intervenor also believe that it can be made to work favorably for any distribution company, including NSTAR. A truly robust green pricing program would be based upon an effective

partnership of suppliers, NSTAR, and the Massachusetts Technology Collaborative's Renewable Energy Trust. The ultimate objectives of supporting new renewable energy projects and making customers happy in the process are both very much achievable and worthwhile.

In any case, the most credible empirical evidence reinforces the common sense view that the NSTAR Green Proposal would have a highly deleterious impact on competitive markets, choice and the development of renewable energy resources.

Respectfully submitted,

THE CAPE LIGHT COMPACT

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